IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 14788 of 2005

For Approval and Signature:

HON'BLE MR JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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CHANDABEN CHUNILAL BHIL & 5 - Petitioner(s)

Versus

PUJABHAI GORDHANBHAI BHUIL & 2 - Respondent(s)

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Appearance :

MR SK BUKHARI for Petitioner No(s).: 1 - 1.
MR PR ABICHANDANI AGP for Respondent No(s).: 3.

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CORAM : HON'BLE MR JUSTICE AKIL KURESHI

Date : 02/08/2005

ORAL JUDGMENT

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1.In the present petition, the petitioners have challenged the order dated 13/3/2000 passed by the Dy. Collector, Narmada as confirmed by an order dated 20/24

May, 2005 passed by the Additional Secretary (Appeals), Revenue Department, Govt. of Gujarat.

2. The land bearing Survey No.67 Paiki of village Shira, Taluka Tilakwada admeasuring 1 Hectare 58 Are was purchased by the predecessor in title of the petitioners on 23rd February, 1970. Finding that the transaction in question was opposed to the provisions of the Bombay Prevention of Fragmentation and Consolidation of Holding Act, 1947 (hereinafter referred to as “the Fragmentation Act”), the original land owners requested the revenue authorities to initiate proper proceedings and for restoration of land in question to them. It appears that thereupon the Dy. Collector initiated the proceedings in the year 1999 and eventually passed an order dated 13th March, 2000 in which the Dy. Collector was pleased to declare that the sale of the land in question was opposed to the provisions of the Fragmentation Act and the buyer of the land should be evicted from the land in question and the land should be restored to the original land owners. The petitioners being heirs of deceased Chunilal Muljibhai who had purchased the land in 1970, as recorded earlier, filed revision application before the Government against the order passed by the Dy.

Collector. The revision application however came to be rejected by the Additional Secretary (Appeals) by his order dated 20/5/2005. Being aggrieved by the above mentioned orders passed by the revenue authorities the petitioners have preferred the present petition.

3. I have heard learned advocate Shri Sunil Mehta for Shri S.K.Bukhari for the petitioners and learned AGP Mr. P.R.Abichandani for the State authorities. Respondent No.1 though served has not participated in the present petition.

4. The short ground on which the orders under challenge are sought to be impugned is that for the sale transaction which took place way back in 1970 proceedings under the Fragmentation Act were initiated by the Dy. Collector for the first time in the year 1999. It is contended that entries in the revenue records indicating the factum of sale transaction were also made in the year 1975. Despite these entries the revenue authorities never initiated the proceedings under the provisions of the Fragmentation Act till 1999. It was only upon an application from the original land owner that after 29 years of the sale of land in question that an objection was raised with respect to the sale in question being opposed to the

provisions of Fragmentation Act.

5. It is not disputed that the sale transaction which is sought to be set aside by the revenue authorities had taken place in the year 1970. Entries in the revenue records in this regard were also made in the year 1975. For 29 long years no steps were taken by the authorities or even the seller to question the said transaction as being opposed to the provisions of the Fragmentation Act. It was for the first time in the year 1999 at the instance of the seller that the Dy. Collector initiated the proceedings under the provisions of the Fragmentation Act to question the sale transaction. In the decision of **Valjibhai Jagjivanbhai vs. State of Gujarat reported in 2005 1 GLH page 34** Division Bench of this High Court has held in terms that proceedings under the provisions of the Fragmentation Act cannot be initiated after an unreasonable period of time that too at the instance of the seller of the land. Following the ratio laid down in the above mentioned decision, I have no hesitation in quashing the impugned orders passed by the authorities. In the result by allowing the petition, order dated 13/3/2000 passed by Dy. Collector and 20/5/2005 passed by the Additional Secretary (Appeals)

are quashed and set aside. Rule is made absolute accordingly. No order as to costs.

(Akil Kureshi, J.)

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